

REMARKS

Favorable reconsideration and allowance of all pending claims are requested in view of the following amendments and remarks. Claims 1 and 4 have been amended. Claim 9 has been canceled. Accordingly, claims 1-6 are pending in the application.

I. Claims Rejected Under 35 U.S.C. § 101

Claims 1-6 and 9 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The limitation in claim 1 "the side plates extend upwards, advantageously above a knee of a person standing on one or both of the foot plates" and in claim 9 "wherein at the height of the shins of the person using the device there is a supporting plate" specifically limits the claim to particular part of the human body. A claim directed to or including within its scope a human being or attributes of a human being is not patentable subject matter. See MPEP § 2105 and 1077 OG 24 (April 21, 1987).

In response, Applicants submit the Examiner has misinterpreted the requirements in MPEP § 2105. Instead, MPEP § 2105, for example, states the following requirements with respect to a human being:

If the broadest reasonable interpretation of the claimed invention **as a whole encompasses a human being**, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter.

(emphasis added). As discussed below, the broadest **reasonable** interpretation of claim 1 **as a whole** does not encompass a human being.

Claim 1 recites the following limitations:

a **wheel** (1) that can be rotated around **an axle** (3);
 foot plates (9, 10) extending outwards under the level of said axle (3) by said wheel (1) having two side plates (7, 8) fixed to the axle (3) of the wheel (1), and the foot plates (9, 10) rigidly fixed to a lower end range of the side plates (7, 8), the lower end range of the side plates being formed so that the side plates (7, 8) extend upwards, **proximal to a knee** (21) of a person standing on one or both of the foot plates (9, 10) and so as to provide a friction-supporting function for the knee and/or a lower leg of the person; and
 a first supporting plate (12) and a second supporting plate (12) that are respectively coupled to each of the side plates (7, 8), the first and second supporting plates being parallel to the axle (3) and extending lateral from each of the side plates.

(emphasis added). Here, the limitations recited in claim 1 **as a whole**, under their broadest reasonable interpretation, clearly do not encompass a human being. Instead, claim 1 is drawn to a device that includes, for example, the elements of “a wheel,” “foot plates” and “two side plates.” Moreover, the elements related to “a knee (21) of a person” in claim 1 **are used in conjunction with** the “side plates” to describe the structure and anatomical direction of the side plates (“so that the side plates (7, 8) extend upwards, proximal to a knee (21) of a person”) and describe a feature of the recited length of the side plates (“to provide a friction-supporting function for the knee and/or a lower leg of the person”). Therefore, it should be understood that the aforementioned limitations related to the human rider are used **solely in context and in conjunction** with the “side plates” to describe the **structure and anatomical direction of the side plates** because one purpose of the device in claim 1 is to function as a device fit for use by a human rider. Thus, the claim limitations in claim 1 should be not, as a whole, be reasonably interpreted as *encompassing a human being* under MPEP § 2105.

With respect to claim 9, this claim has been canceled. Thus, the Examiner’s rejection is moot.

Thus, for at least the above reasons, Applicants submit that claims 1-6 are directed to statutory subject matter under § 101. Accordingly, reconsideration and withdrawal of the rejection of claims 1-6 are respectfully requested.

II. Claims Rejected Under 35 U.S.C. § 112

Claims 1-6 and 9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 11 recites “the side plates (7,8) extend upwards, advantageously above the knee of a person standing on one or both of the foot plates”. This limitation is indefinite since it would be dependent on the size of the person using the device.

In claim 4, line 3 it is unclear what is meant by “maximum distance (c) from the axle of the wheel ensuring operation of the device at a distance (m) from the ground ...” It would appear

that this would encompass any distance desired since it depends on what is considered "operation of the device". The device could operate simply as a paperweight, for example.

Claim 9, line 2 recites "wherein at the height of the shins of the person using the device there is a supporting plate fixed to each of the side plates." This limitation is indefinite since it would be dependent on the size of the person using the device.

With respect to the § 112 rejection of claim 1 and 4, because these rejections are related to indefiniteness issues with the claim language, these claims have been amended to further clarify the claim language and overcome the rejections as discussed below.

With respect to claim 1, Applicants have amended this claim to state "the side plates being formed so that the side plates (7, 8) extend upwards, *proximal* to a knee (21) of a person standing on one or both of the foot plates (9, 10) and so as to provide a friction-supporting function for the knee and/or a lower leg of the person" (emphasis added). The amendments are made to clarify the anatomical direction of the side plates as shown in Fig. 1 of the Specification. Moreover, Applicants submit that an anatomical directional term (i.e., "proximal") specifies a direction with respect to the person but **does not rely on, nor specify requirements for the size** of the person. Thus, Applicants believe that the alleged indefiniteness related to the elements of "advantageously above a knee" have been corrected in light of the amendments.

With respect to claim 4, this claim has been amended to recite the elements of "the foot plates (9, 10) are positioned at a *predetermined* distance (c) from the axle (3) of the wheel (1) ensuring operation of the device at a distance (m) from ground level (t) in an operating position of the device" (emphasis added). Applicants have amended these elements to clarify the claim language by removing the limitations related to the "maximum distance" that the Examiner has alleged as being indefinite.

With respect to claim 9, this claim has been canceled. Thus, the Examiner's rejection is moot.

Thus, in view of the above the amendments and discussion, Applicants respectfully submit that claims 1 and 4 are now compliant under 35 U.S.C. § 112, second paragraph. Moreover, claims 2, 3, 5 and 6 are also compliant under 35 U.S.C. § 112, second paragraph,

because these claims were rejected solely because of their dependencies on claim 1. Accordingly, reconsideration and withdrawal of the rejection of claims 1-6 are respectfully requested.

III. Claims Rejected Under 35 U.S.C. § 102

Claims 1-4 and 6 stand rejected under § 102(b) as being anticipated by U.S. Patent No. 2,971,773 issued to McKissick (hereinafter “McKissick”). To establish an anticipation rejection the Examiner must show that the cited reference teaches each element of a claim.

Claim 1, as amended, recites the elements of “a first supporting plate (12) and a second supporting plate (12) that are respectively coupled to each of the side plates (7, 8), the first and second supporting plates being parallel to the axle (3) and extending lateral from each of the side plates.” Support for the amendments may be found, for example, in Fig. 2 of the Specification (e.g., see elements 12 and 7). McKissick fails to teach these elements. Instead, as shown in Fig. 1 and 2 of McKissick, the “standards 36” that the Examiner has characterized as the “side plates” are coupled to the fork legs and foot-rests. However, McKissick fails to teach the elements of “a first supporting plate (12) and a second supporting plate (12) that are respectively coupled to each of the side plates (7, 8), the first and second supporting plates being parallel to the axle (3) and extending lateral from each of the side plates,” as recited in amended claim 1. Therefore, McKissick fails to teach that a first supporting plate and a second supporting plate as recited in amended claim 1 are coupled to the standards 36 (that the Examiner has equated with “the side plates” in claim 1). In addition, as shown in Fig. 4 of McKissick, Applicants note that the standards 36 in Fig. 1 (that the Examiner has equated to “the side plates”) are located **distal to a knee of the rider** instead of “the side plates being formed so that the side plates (7, 8) extend upwards, proximal to a knee (21) of a person standing on one or both of the foot plates (9, 10),” (emphasis added) as recited in amended claim 1. This is because standards 36 is coupled **adjacently with the foot-rests** (e.g., see element 32 in Fig. 1) to be, irrespective of the size of the rider, **distal to the knee of the rider**. As a result, McKissick fails to teach or suggest each element in amended claim 1.

Therefore, in view of at least the foregoing reasons, McKissick fails to teach the elements of “the lower end range of the side plates being formed so that the side plates (7, 8) extend

upwards, proximal to a knee (21) of a person standing on one or both of the foot plates (9, 10) and so as to provide a friction-supporting function for the knee and/or a lower leg of the person,” and “a first supporting plate (12) and a second supporting plate (12) that are respectively coupled to each of the side plates (7, 8), the first and second supporting plates being parallel to the axle (3) and extending lateral from each of the side plates” as recited in amended claim 1. Accordingly, reconsideration and withdrawal of the rejection of claim 1 are respectfully requested.

With respect to claims 2-4 and 6, each of these claims depends on claim 1 and incorporates the limitations thereof. Thus, for at least the reasons discussed in connection with claim 1, McKissick fails to teach each element of claims 2-4 and 6. Accordingly, reconsideration and withdrawal of the rejection of claims 2-4 and 6 are respectfully requested.

IV. Allowable Subject Matter

Applicants respectfully acknowledge with appreciation the Examiner’s indication that claim 5 would be allowable if amended to overcome the § 101 and § 112 rejections above and then rewritten in independent form including all the limitations of the base claim and any intervening claims. For the reason discussed above, Applicants submit that claim 5 has overcome the asserted § 101 and § 112 rejections. Moreover, Applicants submit that claim 5 is allowable because of its dependency from allowable base claim 1, as discussed above. Thus, for at least the reasons that claim 5 depends from an allowable base claim, Applicants believe claim 5 is patentable over the cited art without rewriting the claims in the manner proposed by the Examiner. Accordingly, Applicants respectfully request consideration and allowance of all pending claims at the Examiner’s earliest convenience.

CONCLUSION

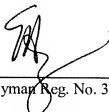
In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

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Dated: 11/5, 2008

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Melissa Stead

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